

Message Text

LIMITED OFFICIAL USE

PAGE 01 GENEVA 05456 01 OF 02 151617Z

44

ACTION EB-11

INFO OCT-01 EUR-25 EA-11 NEA-10 IO-14 ISO-00 AGR-20 CEA-02

CIAE-00 COME-00 DODE-00 FRB-02 H-03 INR-10 INT-08

L-03 LAB-06 NSAE-00 NSC-10 PA-04 RSC-01 AID-20

CIEP-02 SS-20 STR-08 TAR-02 TRSE-00 USIA-15 PRS-01

SPC-03 OMB-01 OIC-04 AF-10 ARA-16 DRC-01 /244 W

----- 107394

R 151415Z OCT 73

FM USMISSION GENEVA

TO SECSTATE WASHDC 2072

INFO AMEMBASSY NEW DELHI

AMEMBASSY OTTAWA

AMEMBASSY STOCKHOLM

AMEMBASSY TOKYO

USMISSION EC BRUSSELS

USMISSION OECD PARIS

LIMITED OFFICIAL USE SECTION 1 OF 2 GENEVA 5456

E.O. 11652: N/A

TAGS: ETRD, GATT

SUBJECT: GATT ANTIDUMPING COMMITTEE, OCTOBER 9-12

BEGIN SUMMARY: US ANTIDUMPING PRACTICES WERE AGAIN CHIEF TOPIC OF DISCUSSION. EC, SWEDEN CONTINUED MAINTAIN US IS IN VIOLATION OF ANTI-DUMPING CODE, WHILE CRITICISM BY JAPAN WAS MILD AND SELECTIVE. CRITICISM BY CANADA WAS NOTABLY ABSENT FROM THIS FORUM FOR REASON EXPLAINED INFRA. SATISFACTION WAS EXPRESSED THAT TARIFF COMMISSION APPEARS HAVE ABANDONED DOCTRINE OF "MORE THAN 'DE MINIMIS'" FOR DETERMINING INJURY. HOWEVER, CONCERN WAS EXPRESSED AT COMMISSION'S MOVE IN DIRECTION OF "LIKELIHOOD OF INJURY." THERE WAS STRONG FEELING OVER CONTINUED REFUSAL OF US TREASURY TO CONDUCT GREATER EXAMINATION OF INJURY

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 GENEVA 05456 01 OF 02 151617Z

QUESTION BEFORE RPT BEFORE INITIATING

ANTIDUMPING INVESTIGATIONS. END SUMMARY

1. TRADE REFORM ACT. EC (MEYNELL FIRST DAY; THEREAFTER BESSLER) CHIDED US FOR MISSING MAJOR OPPORTUNITY OFFERED BY PROPOSED TRADE REFORM ACT TO SUBMIT PROPOSAL TO "BRING US LAW INTO ACCORDANCE WITH GATT ANTI-DUMPING CODE." ALSO EXPRESSED HOPE ESCAPE CLAUSE PROVISIONS OF US TRADE LEGISLATION WILL NOT WEAKEN LINK BETWEEN INJURY AND LTFV SALES IN ANTIDUMPING PROCEEDINGS. US (MARKS) RESPONDED ITS ADMINISTRATION OF ANTIDUMPING ACT IS CONSISTENT WITH CODE; HE RECALLED UNDERSTANDING, DURING NEGOTIATION OF CODE, THAT US WOULD NOT AGREE TO ANY REQUIREMENT CALLING FOR MODIFICATION OF ACT. HE ADDED THAT DISCUSSION OF PROPOSED TRADE REFORM ACT WAS NOT APPROPRIATE BY US DEL WHILE IT IS UNDER CONSIDERATION BY CONGRESS. US NOTED SOME US PROCEDURES HAD PREVIOUSLY BEEN ALTERED TO MEET VALID OBJECTIONS OF CODE SIGNATORIES AND THAT PROBLEMS SUCH AS THESE WOULD HAVE TO CONTINUE TO BE WORKED OUT PRAGMATICALLY.

2. TREASURY EVIDENCE OF INJURY. EC, SWEDEN AND JAPAN MAINTAINED TREASURY VIOLATES CODE BY ACCEPTING CASES AND WITHOLDING APPRAISEMENT ON INSUFFICIENT EVIDENCE OF INJURY. THEY COMPLAINED OF BUSINESS UNCERTAINTY AND EXPENSE INFLICTED UPON COMPANIES IN DEFENDING THEMSELVES AGAINST ANTIDUMPING COMPLAINTS WHICH FAILED TO MEET CODE STANDARDS. EC SPOKESMAN, APPARENTLY ATTACKING AS MUCH FROM RITUAL AND NEED TO IMPRESS REPS OF MEMBER STATES AS FROM ACTUAL EVIDENCE, DREW OFTEN ON SPECIFIC CASES FROM THIRD COUNTRIES RATHER THAN THOSE INVOLVING EC MEMBERS. INSTANCES CITED INCLUDED:
A) THOSE WHERE WITHOLDING OF APPRAISEMENT WAS PUT INTO EFFECT NOTWITHSTANDING FACT THAT ALL IMPORTS HAD CEASED;
B) WHERE INDIVIDUAL FIRMS RATHER THAN US NATIONAL INDUSTRY ADVERSELY AFFECTED; AND C) INITIATION OF INVESTIGATIONS WHERE NO ACTUAL SALES AT LESS THAN FAIR VALUE HAD EVEN BEEN ALLEGED TO HAVE TAKEN PLACE (I.E., ON BASIS OF FOREIGN BIDS ONLY). RE A) US SUPPLIED FIGURES INDICATING SIGNIFICANT IMPORTS AT TIME COMPLAINT WAS FILED AND NOTED THAT ACT OF WITHOLDING OF APPRAISEMENT NORMALLY HAS EFFECT OF LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 GENEVA 05456 01 OF 02 151617Z

CAUSING EXPORTERS TO HOLD BACK BECAUSE OF DANGER OF INCURRING DUMPING DUTIES. US POINTED OUT THAT ADOPTION OF POLICY SUGGESTED BY EC COULD SUBSTANTIALLY DESTROY EFFECTIVENESS OF ANTIDUMPING MEASURES AND THAT US POLICY IN THIS REGARD IS FULLY CONSISTENT WITH CODE.
RE B) US POINTED OUT THAT AMERICAN COMPLAINT IN CASE REFERRED TO BY EC, WHERE NO NATIONAL INDUSTRY WAS ALLEGEDLY INJURED, IN FACT REPRESENTED TWO-THIRDS OF

ALL US INDUSTRY SALES. RE C) US NOTED THAT IT ACTED AFTER RECEIVING PERSUASIVE EVIDENCE THAT IF CONTRACT HAD BEEN LET ON BASIS OF THE LESS-THAN-FAIR-VALUE BIDS, THE US COMPANY CONCERNED WOULD HAVE BEEN PUT OUT OF BUSINESS; THAT UNDER SUCH CIRCUMSTANCES INITIATION OF INVESTIGATION ON BASIS OF OFFERS AT LESS THAN FAIR VALUE WAS AMPLY JUSTIFIED AND FULLY CONSISTENT WITH CODE.

EC MADE REPEATED STATEMENTS AGAINST TREASURY POLICY OF REFUSING TO TURN DOWN COMPLAINTS ON INJURY GROUNDS EXCEPT WHERE THERE WAS NO CONCEIVABLE BASIS FOR DETERMINATION OF INJURY BY TARIFF COMMISSION. CONTENTED THIS WAS CLEAR VIOLATION OF CODE AND CONSTITUTED UNFAIR TRADE PRACTICE IN THAT FOREIGN EXPORTERS ARE PUT TO EXPENSE OF DEFENDING THEMSELVES AGAINST ACCUSATIONS WHICH UNDER CODE RULES SHOULD HAVE NEVER BEEN INITIATED BECAUSE OF INADEQUATE PROOF OF INJURY. TO SUPPORT THIS CONTENTION EC REFERRED TO INCREASING NUMBERS OF NEGATIVE INJURY DETERMINATIONS BY TARIFF COMMISSION. US REPLIED: A) THAT TREASURY WAS REQUIRING FULLER INFORMATION RE INJURY FROM COMPLAINANTS; B) FACT THAT INVESTIGATIONS SUBSEQUENTLY RESULTED IN NEGATIVE FAIR VALUE DETERMINATION BY TREASURY OF INJURY DETERMINATION BY TARIFF COMMISSION COULD NOT BE ACCEPTED AS EVIDENCE THAT TREASURY SHOULD NEVER HAVE ACTED ON COMPLAINT IN FIRST INSTANCE. US POINTED OUT THAT IF EC LOGIC WERE FOLLOWED TO EXTREME ALL TREASURY ANTIDUMPING INVESTIGATIONS WOULD NECESSARILY RESULT IN DUMPING FINDINGS. THIS ISSUE PROVED GREATEST SINGLE BONE OF CONTENTION DURING MEETING. EC WARNED THAT UNLESS TREASURY GAVE MORE ATTENTION TO SIMULTANEOUS INJURY PROVISION OF CODE, US COULD EXPECT "ROUGH TIME" ON THIS ISSUE AT NEXT YEAR'S MEETING.

LIMITED OFFICIAL USE

NNN

LIMITED OFFICIAL USE

PAGE 01 GENEVA 05456 02 OF 02 151626Z

44

ACTION EB-11

INFO OCT-01 EUR-25 EA-11 NEA-10 IO-14 ISO-00 AGR-20 CEA-02

CIAE-00 COME-00 DODE-00 FRB-02 H-03 INR-10 INT-08

L-03 LAB-06 NSAE-00 NSC-10 PA-04 RSC-01 AID-20

CIEP-02 SS-20 STR-08 TAR-02 TRSE-00 USIA-15 PRS-01

SPC-03 OMB-01 OIC-04 AF-10 ARA-16 DRC-01 /244 W

----- 107467

R 151415Z OCT 73

FM USMISSION GENEVA

RUEHC/SECSTATE WASHDC 2073

INFO AMEMBASSY NEW DELHI

AMEMBASSY OTTAWA

AMEMBASSY STOCKHOLM

AMEMBASSY TOKYO

USMISSION EC BRUSSELS

USMISSION OECD PARIS

LIMITED OFFICIAL USE SECTION 2 OF 2 GENEVA 5456

3. PRICE COMPARISIOS. SWEDEN AND EC REITIZED US FOR
USING HOME MARKET PRICE COMPARISONS IN CASE WHERE ONLY 3.9
PERCENT OF SALES WERE DOMESTIC SALES AND FOR USING "THEO-
RETICAL" PRICE COMPARISONS FOR TAILOR-MADE MACHINES.
US RESPONDED THAT IT USES PERCENTAGE OF NON-US SALES IN
DETERMINING WHETHER TO USE HOME MARKET PRICE FOR FAIR
VALUE COMPARISON PURPOSES; THAT IN CASE REFERRED TO 10
PERCENT OF SALES WERE MADE IN HOME MARKET, MORE THAN ENOUGH
TO FULLY JUSTIFY USE OF HOME MARKET PRICE. US TOTALLY
REJECTED CONCEPT THAT TAILOR-MADE MACHINES SHOULD BE
EXCLUDED FROM PARAMETERS OF ANTIDUMPING RULES, AS
IMPLIED BY SWEDISH REP ON GROUND THAT "THEORETICAL"
PRICE COMPARISONS ARE UNJUSTIFIED. US NOTED THAT
PRICE/COST FORMULA ACTUALLY USED IN CASE REFERRED TO
BY SWEDISH REPRESENTATIVE WAS SUGGESTED BY THE SWEDISH
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 GENEVA 05456 02 OF 02 151626Z

EXPORTER.

4. TARIFF COMMISSION INJURY CRITERIA. WHILE EXPRESSING
SATISFACTION THAT TARIFF COMMISSION APPEARS TO HAVE
ABANDONED MORE THAN DE MINIMIS DOCTRINE, EC REGRETTE
THAT ADMINISTRATION HAD FAILED TO PROVIDE IN TRADE REFORM
BILL FOR INJURY PROVISION REQUIRING COMFORMANCE WITH CODE.
EC STATED THAT BECAUSE OF ADMINISTRATION FAILURE TO ACT
IN THIS AREA TARIFF COMISSION WAS FREE AT ANY TIME TO
RETURN TO MORE THAN DE MINIMIS DOCTRINE. CONCERN WAS ALSO
EXPRESSED BY EC OVER TENDENCY OF TARIFF COMMISSION TO MOVE
IN DIRECTION OF "LIKELIHOOD OF INJURY" DETERMINATION.
US RESPONDED BY READING AND EXPLAINING EXCERPTS FROM
RELEVANT TARIFF COMMISSION DECISION (INSTANT POTATO
GRANULES FROM CANADA) IN SUPPORT OF LIKELIHOOD OF INJURY
DETERMINATION.

5. PRICE UNDERTAKINGS: JAPANESE WRITTEN PRESENTATION ON PRICE UNDERTAKINGS WAS SUBMITTED TO SECRETARIAT LATE IN MEETING. COMMITTEE AGREED THAT OTHER COUNTRIES WILL HAVE THREE MONTHS FROM TIME DOCUMENT IS DISTRIBUTED BY SECRETARIAT TO SUBMIT COMMENTS AND THAT THEN US WILL BE EXPECTED TO COMMENT WITHIN THREE ADDITIONAL MONTHS ON ALL WRITTEN SUBMISSIONS. DISCUSSION ON BASIS OF THE WRITTEN SUBMISSIONS WILL TAKE PLACE AT NEXT YEAR'S MEETING.

6. DISCUSSION OF OTHER COUNTRY PRACTICES LIMITED TO SPANISH COMPLAINT AGAINST CANADIAN PRACTICES (COM.AD/W/35), OCT. 10, 1973). EC STRONGLY SUPPORTED SPANISH DELEGATE IN ATTACKING CANADIAN DELEGATION OF THIS ISSUE.

7. WORKING PARTY ON LDC ADOPTION OF CODE. WP AGREED TOO AD-REFERENDUM ACCEPTANCE OF DRAFT LANGUAGE FOR AN EXPLANATORY NOTE TO CODE. LANGUAGE WOULD BE THAT ON PAGE 3 OF SPEC (72) 125, WITH BRACKETED WORDS REPLACED BY "WHICH PROVIDES, INTER ALIA, FOR THE DETERMINATION OF NORMAL VALUE ON THE BASIS OF COMPARABLE PRICE." INDIA REP STATED THIS WAS MERELY ELABORATION OF ARTICLE 2 OF CODE BUT AGREED SUBMIT THIS LANGUAGE TO NEW DELHI FOR CONSIDERATION. INDIA ALSO ASKED THAT FURTHER ADDITIONS TO LANGUAGE NOT LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 GENEVA 05456 02 OF 02 151626Z

BE RULED OUT. WP AGREED TEXT AUTOMATICALLY ACCEPTED UNLESS OBJECTIONS RECEIVED BY END 1973. IF ALTERNATIVE LANGUAGE PROPOSED, CONSIDERATION OF ENTIRE ISSUE WILL REVERT TO NEXT YEAR'S MEETING.

8. COMMENT. US DEL HAD EXTENSIVE BILATERAL CONTACTS WITH REPS OF EC, CANADA, JAPAN AND SWEDEN AS WELL AS PRIOR DISCUSSIONS WITH CHAIRMAN (HUSLID) AND SECRETARIAT (KAUTZOR-SCHRODER). DESPITE EVIDENT EC INTENT NOT TO RELAX PRESSURE AGAINST US ANTIDUMPING APPROACH, IMPROVEMENTS IN US PROCEDURES WERE APPRECIATED BY COMMITTEE IN GENERAL. SWEDEN INVAIRABLY SUPPORTED EC AGAINST US, REGARDLESS OF ISSUE. US CONTINUALLY EMPHASIZED WILLINGNESS TO TAKE PRAGMATIC APPROACH TO VALID PROBLEMS REISED, INDICATING READINESS TO EXAMINE ANY SOLUTION CONSISTENT WITH US LAW. HUSLID TURNED OUT TO BE STRONG CHAIRMAN WHO DID NOT HESITATE TO DEMONSTRATE FRIENDLY ATTITUDE TOWARD US WITHIN BOUNDS OF HIS CHAIRMANSHIP ROLE. CANADIANS INDICATED IN BILATERAL DISCUSSIONS THAT THEY IN AGREEMENT WITH US POSITION PUT TO THEM INFORMALLY BY MARKS IN WASHINGTON THAT US-CANADIAN ANTIDUMPING DIFFERENCES SHOULD BE SETTLED BILATERALLY RATHER THAN IN ANTIDUMPING COMMITTEE.

9. COMMITTEE REPORT TO CONTRACTING PARTIES. AGREE-
MENT ON REPORT TOOK FULL DAY OF ARDUOUS DISCUSSION.
US DELEGATION FEELS IT CAME OUT RELATIVELY WELL. THIS
WAS LARGELY BECAUSE OF TARIFF COMMISSION'S DROPPING OF
MORE THAN DE MINIMIS DOCTRINE. UNLESS TREASURY FINDS
SOME SOLUTION TO SIMULTANEOUS INVESTIGATION OF INJURY
PROBLEM NEXT YEAR'S MEETING WILL BE CONSIDERABLY MORE
DIFFICULT.BASSIN

LIMITED OFFICIAL USE

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 15 OCT 1973
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: willialc
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1973GENEVA05456
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: n/a
From: GENEVA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1973/newtext/t19731033/aaaaaxwb.tel
Line Count: 285
Locator: TEXT ON-LINE
Office: ACTION EB
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 6
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: willialc
Review Comment: n/a
Review Content Flags:
Review Date: 05 OCT 2001
Review Event:
Review Exemptions: n/a
Review History: RELEASED <05-Oct-2001 by eisnerah>; APPROVED <26-Nov-2001 by willialc>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: GATT ANTIDUMPING COMMITTEE, OCTOBER 9-12 BEGIN SUMMARY: US ANTIDUMPING PRACTICES WERE AGAIN CHIEF
TAGS: ETRD, GATT
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005